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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,510	07/16/2003	Koshi Ando	14804-010001	8481
26211	7590	06/02/2004	EXAMINER	
FISH & RICHARDSON P.C. 45 ROCKEFELLER PLAZA, SUITE 2800 NEW YORK, NY 10111			TRAN, TAN N	
			ART UNIT	PAPER NUMBER
			2826	

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)	
	10/620,510	ANDO ET AL.	
	Examiner TAN N TRAN	Art Unit 2826	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 16 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/16/20</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restriction*

1. Applicant's election without traverse of Group I, claims 1-10 is acknowledged.

### **Specification**

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### **Claim Rejections - 35 USC § 112**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 6,7 "a p-Zn<sub>1-x</sub>Mg<sub>x</sub>S<sub>y</sub>Se<sub>1-y</sub> ( $0 \leq x \leq 0.8$ ,  $0 \leq y \leq 0.8$ ) layer epitaxially grown on the p-(ZnSe/ZnTe)<sup>m</sup> superlattice or via a p-ZnSe buffer layer upon the p-(ZnSe/ZnTe)<sup>m</sup> superlattice" is indefinite because the expression "or" renders the claim alternative.

#### *Allowable Subject Matter*

4. Claims 1-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 1-10 are allowable over the prior art of record, because none of these references disclose or can be combined to yield the claimed invention such as a p-(ZnSe/ZnTe)<sup>m</sup> (<sup>m</sup>: integer denoting a number of pair layers) superlattice which is made by piling p-ZnSe thin films and p-ZnTe thin films reciprocally for changing bandgaps stepwise and is epitaxially grown directly on the top surface of the p-GaAs substrate as recited in claim 1.

#### **Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rennie et al.(6121638) discloses a p-GaAs substrate 14 having a top surface and a bottom surface; a p-MgZnSSe layer 9 formed on the top surface of the p-GaAs substrate 14; undoped

ZnSe layer 6 formed on p-MgZnSSe layer 9; and a n-MgZnSSe layer 5 formed on the undoped ZnSe layer 6. (Note fig. 3 of Rennie et al.).

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Tan Tran whose telephone number is (571) 272-1923. The examiner can normally be reached on M-F 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

TT

May 2004

*Minhloan Tran*  
**Minhloan Tran**  
**Primary Examiner**  
**Art Unit 2826**